

# Retirement News for Employers

**Tax Information for Sponsors of Retirement Plans**  
Internal Revenue Service Tax Exempt and Government Entities

## Fall 2011

**Paying Retirement Plan Benefits** – [Distribution methods](#) depend on the plan, and the participant and beneficiary elections

**Maximize your Retirement Savings in 2012** - making [salary deferral contributions](#) to a retirement plan

## SEPs and SIMPLEs

- [SIMPLE IRA plans can't be amended or terminated](#) during the plan year
- [SEP and SIMPLE IRA plans](#) don't have the same contributions limits as IRAs

**Disaster Relief for Retirement Plans and IRAs** - IRS may [extend](#) certain deadlines

**Exam Director discusses priorities** for the current fiscal year

## Get Involved

- **EPCRS Phone Forum** – November 30, 2:00 EST – [Plan errors](#) we're finding in the Employee Plans Compliance Resolution System: our Self-Correction and Closing Agreement Program
- **Join the ACT! Apply** by December 1, 2011, to be on the Tax Exempt and Government Entities Advisory Committee and provide input on retirement plan issues

## Forms

- [Revised Form 5300](#) (April 2011) is available, but Cycle A filers may use the [September 2001](#) version
- [Form 5558 Reminders](#)
- [Form 8955-SSA FAQ](#)

## Recurring Columns

- [Mark Your Calendar](#)
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## Paying Retirement Plan Benefits

The method by which retirement plan benefits are distributed is determined by the:

- options available under the plan, and
- elections made by participants and their beneficiaries.

Defined contribution plans, such as 401(k)s and profit-sharing plans, generally pay retirement benefits in a lump sum or installments. The normal method of distribution in defined benefit plans, on the other hand, is an annuity paid over the employee's life or the joint lives of the employee and his or her spouse, unless consent from the employee and, if married, the employee's spouse is obtained.

When an employee terminates employment prior to normal retirement age, before a distribution can be made (except in the case of cash-outs described in Lump-Sum Payment below) the employee must be given a written [notice](#) explaining the:

- available benefit payment options under the plan;
- right to delay payment until the later of the plan's normal retirement age, or age 62; and
- consequences of failing to delay payment.

## If You are the Plan Sponsor...

- Know what forms of distribution are available to participants and beneficiaries under the plan.
- Retain participant distribution election forms together with notarized spousal consents, if applicable.
- Communicate with your plan administrator about:
  - who provides the required notices and consent forms for distributions;
  - who calculates and pays out the benefit;
  - plan changes; and
  - beneficiary updates as a result of [participant life changes](#).

## Lump-Sum Payment

A plan can make a lump-sum distribution of a participant's or beneficiary's entire accrued vested benefit without consent (a cash-out) if the benefit is \$5,000 or less. If the benefit is more than \$5,000, a lump-sum distribution can only be made with the participant's (and spouse's, if applicable) written consent.

## Installment Payments

Installment payments are made at regular intervals, for a definite period (such as 5 or 10 years) or in a specified amount (for example, \$2,000 a month) to continue until the account is depleted.

## Annuity Payments

Annuity payments are made from a defined benefit plan or under a contract purchased by a defined contribution plan. Payments are made at regular intervals over a period of more than one year, depending on the [type of annuity](#).

- If the participant is married prior to the first day of the period for which benefits are paid as an annuity, a plan subject to the spousal annuity requirements must pay benefits in the form of a [qualified joint and survivor annuity](#) (QJSA). In this case, if the participant dies before the spouse, the plan pays the spouse a life annuity. A participant, with proper spousal consent, may waive the QJSA and chose another payment option. Plans subject to the QJSA rules may also have to offer participants a qualified optional survivor annuity (QOSA) that provides a surviving spouse an annuity equal to either 50% or 75% of the annuity payments to be made during the participant's life.

For a married, vested participant who dies before the annuity starting date, the plan must pay a [qualified pre-retirement survivor annuity](#) (QPSA) to the surviving spouse.

The participant, with spousal consent, may waive either the QJSA or QPSA annuities and choose an alternate form of distribution provided under the terms of the plan.

- Unmarried participants must receive a single-life [annuity](#), unless waived.
- **Plans not subject to QJSA/QPSA**  
Most defined contribution plans are not subject to the QJSA and QPSA rules. However, when a married participant dies, these plans must pay the entire remaining vested account balance to the participant's surviving spouse unless the spouse has consented to another beneficiary.
- **Plans subject to QJSA/QPSA**
  - [Defined benefit, money purchase pension](#) and target benefit plans must offer QJSAs and QPSAs if a participant's vested accrued benefit is more than \$5,000, but may offer other payment options as well.
  - Defined contribution plans must also offer QJSAs and QPSAs for account balances over \$5,000 unless:
    - the participant doesn't choose a life annuity under the plan;
    - the plan pays the entire remaining vested account balance on the married participant's death to the surviving spouse unless the spouse has consented to another beneficiary; and
    - the plan is not a transferee of a plan that was subject to QJSA/QPSA

## Maximize Your Salary Deferrals in 2012

Does your employer's retirement plan allow you to make contributions from your salary? If so, you are likely to be asked to complete a salary deferral form (salary reduction agreement) now to indicate the amount you want to contribute to the plan from your salary in 2012.

To maximize your retirement savings, contribute as much as possible to the plan up to the 2012 allowed limits of:

- \$17,000 to 401(k) or 403(b) plans
- \$11,500 to SIMPLE plans

If you are 50 or older by the end of 2012, your plan may allow you to make additional (catch-up) contributions of:

- \$5,500 to 401(k) or 403(b) plans
- \$2,500 to SIMPLE plans

Remember, in addition to saving more for your retirement, there are other benefits of making salary deferral contributions to the plan. For example:

- you may reduce your taxable income by making pre-tax contributions;
- your employer may match your contributions to the plan (for example, your employer may contribute 50 cents for each dollar that you contribute to the plan, up to a certain amount); and
- you may qualify for the [retirement savings contributions credit](#) of up to \$1,000 (up to \$2,000 if filing jointly) for contributing to the plan and this credit may reduce your federal income tax liability.

If you decide to contribute less than the maximum allowed at this time, you may be able to increase your contributions by completing a new salary deferral form during 2012.

Contact your employer for details about the retirement plan, including how much you can contribute from your salary, whether the employer also makes contributions on your behalf and whether you can change the amount of your contributions to the plan in 2012.

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## We're Glad You Asked!

### Can I amend or terminate my SIMPLE IRA plan in the middle of the year?

No. You can't amend or terminate your SIMPLE IRA plan mid-year. A [SIMPLE IRA plan](#) must be operated for the entire calendar year (or the remainder of the calendar year if started after January 1). Additionally, once you have given employees the annual notice describing the plan features for the coming year, you can't change any of those features during the year.

**Example:** On November 18, 2011, Acme Company decided it would like to change its SIMPLE IRA plan matching contributions from 3% to 1%. Acme's SIMPLE IRA plan notice to employees (given on November 2, 2011) stated the match would be 3% for 2012. Acme must contribute 3% for 2012. The earliest effective date for Acme's change in matching contributions would be January 1, 2013. Acme must notify its employees during 2012 that it will reduce the matching contribution to 1% in 2013.

If your SIMPLE IRA plan no longer fits your business needs and you'd like to terminate it, notify the SIMPLE IRA plan financial institution that you won't be contributing the next calendar year. You must also notify your employees by November 2 that you will discontinue the SIMPLE IRA plan effective the first day of the next calendar year. You don't need to notify the IRS that you have terminated the SIMPLE IRA plan.

**Example:** Acme Company decided on November 18, 2011, to terminate its SIMPLE IRA plan as soon as possible. The earliest effective date for the termination would be January 1, 2013. Acme must notify its employees during 2012 that it won't sponsor a SIMPLE IRA plan for 2013.

### Additional Resources

- FAQs: [SIMPLE IRA Plans](#)
  - [Terminate a SIMPLE IRA Plan](#)
  - [Notice 98-4](#), *SIMPLE IRA Plan Guidance*
  - [Publication 560](#), *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*
  - [Publication 4334](#), *SIMPLE IRA Plans for Small Businesses*
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### Do SEP and SIMPLE IRA plans have the same contribution limits as regular IRAs?

No, contributions to SEP and SIMPLE IRA plans aren't subject to the same [limits](#) that apply to an individual's traditional or Roth IRA.

### SIMPLE IRA Contributions

A [SIMPLE IRA](#) may only accept the following types of contributions:

- employee salary deferrals;
- the employer's contributions (matching or nonelective); and
- rollovers from another SIMPLE IRA.

### SEP-IRA Contributions

Only employers may contribute to a SEP plan, and these contributions are held in employees' SEP-IRAs. However, if the SEP-IRA document permits (and most do), you can make regular IRA contributions to your SEP-IRA up to the maximum annual IRA contribution limit.

If you're covered by a SEP or SIMPLE IRA plan (see [Are You Covered by an Employer's Retirement Plan?](#)), it may affect the amount you or your spouse may deduct for your contributions to a traditional IRA.

### Additional Resources

- [IRA Resources](#)
- [Publication 560](#), *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*
- [Publication 590](#), *Individual Retirement Arrangements (IRAs)*



## Disaster Relief for Retirement Plans and IRAs

In the event of a presidentially declared disaster or a terrorist or military action, the IRS will postpone certain retirement plan and IRA deadlines for affected taxpayers. Most presidentially declared disasters are because of severe storms (such as tornadoes and hurricanes), but they may also be due to wildfires, flooding and earthquakes. Affected taxpayers are generally people who live in or have a business in an area directly impacted by the disaster. Soon after a disaster is declared, the IRS will issue a news release describing the:

- type of relief (which deadlines are being postponed),
- taxpayers eligible for relief, and
- duration of the relief period.

[Revenue Procedure 2007-56, section 8](#), lists the retirement plan and IRA deadlines that the IRS may postpone because of a disaster. For example, the IRS may:

- extend the 60-day period for plan participants to deposit eligible rollover distributions to another qualified plan or IRA, or
- extend the time for a qualified plan to make a required minimum distribution.

The IRS may postpone all or only certain deadlines listed in Revenue Procedure 2007-56 based on when the disaster occurred and its severity as well as other factors. Unless the news release for a particular disaster limits the relief, all the deadlines listed in Revenue Procedure 2007-56 will be postponed.

Visit the IRS [Tax Relief in Disaster Situations](#) Web page to view the latest disaster-related new releases and other guidance.

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## Desk Side Chat...With Monika Templeman - Examination Priorities for the Current Fiscal Year

*In each issue, Monika Templeman, Director of EP Examinations, responds to questions and offers insights on retirement plan topics uncovered during audits. You may provide feedback or suggest future topics for discussion by emailing her at: [RetirementPlanComments@irs.gov](mailto:RetirementPlanComments@irs.gov).*

Hello everyone –

I'd like to highlight some of Employee Plan's Operating Priorities for this fiscal year and explain their impact on our compliance strategies. I'll share our accomplishments to date and outline our next steps.

### 401(k) Plans

Our [401\(k\) Compliance Check Questionnaire Project](#) has several phases and spans multiple years.

Over 95% of the 1,200 plan sponsors contacted by the Employee Plans Compliance Unit voluntarily completed the online [questionnaire](#). We initiated examinations on the plans of sponsors who didn't answer the questionnaire and collected the questionnaire data during the examination.

We'll post an interim report soon to [www.irs.gov/retirement](http://www.irs.gov/retirement). We'll complete the final report by the end of FY 2012 and announce when it's posted on our website.

We'll use the questionnaire data to improve our web-based tools and guidance, including the Employee Plans Compliance Resolution System. We'll also use the data to enhance our compliance strategies, improve voluntary compliance through education and outreach efforts and, where appropriate, expand enforcement activities.

## International Activities

In our global economy, many U.S. companies have employees working abroad. This affects employees' retirement plan benefits. As globalization continues, EP International will continue to cover issues related to offshore asset sheltering, multinational corporations' activities and taxpayers at all economic levels.

EP International has made significant progress on international initiatives and projects, including the Hacienda Project with Puerto Rico and compliance efforts in the U.S. Virgin Islands. In addition to providing audit assistance on dual jurisdiction plans, we trained agents in Puerto Rico and the U.S. Virgin Islands and helped them to promote voluntary compliance.

EPCU completed two international compliance check projects on [foreign distributions](#) and [domestic trusts](#). It also started a new [Hacienda](#) Compliance Check Project, which focuses on the Form 5500 coding to ensure adherence to Puerto Rican or U.S. law. To distinguish the qualification intention of plans covering Puerto Rico employees, we created two feature codes for the Form 5500, line 8. Plan sponsors use 3C if the plan doesn't intend to be qualified under the Internal Revenue Code and 3J if the plan intends to be dual-qualified.

The Employee Plans Team Audit group is currently examining more than 40 returns with international issues.

We'll continue to expand our international and U.S. Territory enforcement coverage, identify new international issues, provide online web materials and, most importantly, ensure effective global tax administration.

## Abusive Actions & Technical Issues

We continue to devote substantial resources to identifying, analyzing and examining [abusive actions and technical issues](#).

We increased our investigations of promoters who use retirement plans as vehicles for tax evasion. We also identified new schemes and emerging issues and shared them with you through our outreach programs. [Let us know](#) of any issue that you believe needs further investigation.

We'll continue to deter abusive schemes involving retirement plans by identifying abusive transactions and emerging technical issues.

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## Revised Form 5300

The second remedial amendment cycle submission period for individually designed plans in Cycle A began on February 1, 2011 and ends on January 31, 2012. Cycle A determination letter requests should be filed on Form 5300, *Application for Determination for Employee Benefit Plan*.

Revised [Form 5300](#) became available in April 2011. However, the IRS recognizes that determination letter application preparers need some time to update software to use new forms. Accordingly, sponsors filing Cycle A determination letter requests may use the previous version of Form 5300 ([Rev. 9-2001](#)) for their second remedial amendment cycle submissions

## Mark Your Calendar

Operating a retirement plan can be a time-consuming job. To help you, we've listed some important dates in the upcoming months. Please note that these deadlines are for calendar-year plans (non-calendar-year plans must adjust the dates):

### December 2:

- Give 2012 plan year notice to eligible employees for safe harbor 401(k) plans and plans containing an eligible automatic contribution arrangement.
- Give Qualified Default Investment Alternative notice to participants/beneficiaries in self-directed defined contribution plans whose contributions defaulted to the QDIA.

### December 31:

- Distribute 2010 401(k) excess contributions (including income or losses for 2010) and excess aggregate contributions without jeopardizing the plan's tax-qualified status.
- Revoke a single-employer defined benefit plan sponsor's previous election to use a funding balance to offset minimum required contributions for the 2011 plan year, to the extent the election exceeded the full minimum required contribution for the year (only for plans with valuation dates on the first day of the plan year).
- Elect to reduce January 1, 2011, funding balances to avoid or lift benefit restrictions under IRC section 436 for a single-employer DB plan.

**January 15:** Make the 2011 fourth quarter contributions for DB plans.

**January 17:** File Form 990-B for both the 2009 and 2010 plan years by the later of (1) January 17, 2012 or (2) the due date that generally applies for filing the Form 990-B for 2010.

### January 31:

- File [Form 945](#), *Annual Return of Withheld Federal Income Tax*. If you made deposits timely in full payment of the taxes for 2011, you may file Form 945 by February 10, 2012.
- Trustees and custodians must issue [Form 1099-R](#), *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, to recipients of 2011 retirement plan distributions.
- Amend for [recent law changes](#) and submit the plan for a [determination letter](#), if desired, for an individually designed plan with an EIN ending in 1 or 6.

Visit the [Retirement Plans Community](#) Web page for a complete list of upcoming Employee Plans Educational Events/Conferences,



## DOL News

*The Department of Labor's Employee Benefits Security Administration (DOL/EBSA) announced new guidance as featured below. You can subscribe to [DOL/EBSA's](#) website homepage for updates.*

### Proposed Definition of “Fiduciary” of Employee Benefit Plans

On September 19, DOL/EBSA announced that it will re-propose its rule on the definition of a fiduciary. The decision to re-propose is in part a response to requests from the public, including members of Congress, that the agency allow an opportunity for more input on the rule.

The decision to re-propose means that this initiative will benefit from additional input, review and consideration. The agency agrees with stakeholders and lawmakers that more public input and greater research will strengthen the rule. This extended input will supplement more than 260 written public comments already received, as well as two days of open hearings and more than three dozen individual meetings with interested parties held by the agency.

Consistent with the president's executive order, the extended rulemaking process also will ensure that the public receives a full opportunity to review the agency's updated economic analysis and revisions of the rule. DOL/EBSA will continue to coordinate closely with the Securities and Exchange Commission and the Commodities Futures Trading Commission to ensure that this effort is harmonized with other ongoing rulemakings.

Specifically, the agency anticipates revising provisions of the rule including, but not restricted to, clarifying that fiduciary advice is limited to individualized advice directed to specific parties, responding to concerns about the application of the regulation to routine appraisals and clarifying the limits of the rule's application to arm's length commercial transactions, such as swap transactions.

Also anticipated are exemptions addressing concerns about the impact of the new regulation on the current fee practices of brokers and advisers, and clarifying the continued applicability of exemptions that have long been in existence that allow brokers to receive commissions in connection with mutual funds, stocks and insurance products. The agency will carefully craft new or amended exemptions that can best preserve beneficial fee practices, while at the same time protecting plan participants and individual retirement account owners from abusive practices and conflicted advice.

The agency is seeking to amend a 1975 regulation, which defines when a person providing investment advice becomes a fiduciary under the Employee Retirement Income Security Act, in order to adapt the rule to the current retirement marketplace. The proposal's goal is to ensure that potential conflicts of interest among advisers are not allowed to compromise the quality of investment advice that millions of America's workers rely on, so they can retire with the dignity that they have worked hard to achieve. When finalized, this important initiative will safeguard workers who are saving for retirement as well as the businesses that provide retirement plans to America's working men and women.

The new proposed rule is expected to be issued in early 2012. For more information on the proposed rule, visit DOL/EBSA's website at <http://www.dol.gov/ebsa/regs/cmt-1210-AB32.html>.

### Investment Advice

On October 25, DOL/EBSA published a [final regulation](#) implementing a prohibited transaction exemption under an amendment to ERISA and the Internal Revenue Code as part of the Pension Protection Act of 2006.

The prohibited transaction rules in ERISA and the IRC generally prevent a fiduciary investment adviser from recommending plan investment options if the adviser receives additional fees from the investment providers. Although these rules protect participants from conflicts of interest, ERISA provides exemptions from the rules in appropriate circumstances and permits DOL/EBSA to grant exemptions that have participant-protective conditions. The new regulation implements an exemption enacted as part of the PPA to improve participant

access to fiduciary investment advice, which contains safeguards and conditions to prevent investment advisers from providing biased advice that is not in the participant's best interest.

To qualify for the exemption, investment advice must be given through the use of a computer model that is certified as unbiased by an independent expert or through an adviser compensated on a "level-fee" basis, meaning that the fees do not vary based on investments selected. Both types of arrangements must also satisfy several other conditions, including the disclosure of the adviser's fees and an annual audit of the arrangement for compliance with the regulation.

### **DOL, SEC Coordinate on 401(k) Plan Fee Disclosure Rule**

On October 27, DOL/EBSA and the Securities and Exchange Commission released a [SEC no-action letter](#) relating to DOL/EBSA's participant-level fee disclosure regulation and Rule 482 under the Securities Act of 1933. The letter states that the information required by and that complies with the fee disclosure regulation that is provided by a plan administrator, or designee, to plan participants or beneficiaries will be treated as a communication that satisfies the requirement under Rule 482. The letter's intent is to resolve concerns about potential differences between DOL/EBSA's participant disclosure requirements and the SEC rules on advertising that may apply to plan investment options.

### **Electronic Disclosure by Employee Benefit Plans**

On September 13, DOL/EBSA issued [Technical Release 2011-03](#) which provides an interim policy regarding the use of electronic media to satisfy the disclosure requirements under DOL/EBSA's [final participant-level fee disclosure regulation](#).

The participant fee disclosure regulation requires employers to disclose more information about plan and investment costs to workers who direct their own investments in ERISA-covered 401(k) and other individual account retirement plans. Under the final rule, plans generally have until at least May 31, 2012 to start giving better information on 401(k) and similar plan fees and expenses.

The technical release allows plan administrators to furnish information required under the participant disclosure rule electronically. This includes the use of continuous access websites, if certain conditions and safeguards are met. The interim policy states that DOL/EBSA will not take enforcement action based solely on a plan administrator's use of electronic technologies to make the required disclosures under the participant fee disclosure regulation if the administrator complies with the conditions in the technical release.

The relief in the technical release is limited to the disclosures required under the final participant fee disclosure regulation.

### **Questions and Answers on Multiemployer Plan Leasing Arrangements**

On October 13, DOL/EBSA issued [questions and answers](#) to help trustees of multiemployer benefit plans understand how to avoid prohibited transactions in common leasing arrangements. The questions and answers describe arrangements in which a multiemployer plan leases office space or classroom space to or from a sponsoring union or other party who has a relationship to the plan and the prohibited transaction rules that are violated by those arrangements. Also addressed are the administrative and statutory exemptions that may apply with an analysis of the specific prohibited transaction provisions that are covered by each exemption. The questions and answers also describe the consequences to a plan fiduciary if the leasing arrangement is prohibited but does not qualify for an exemption.

### **Prohibited Transaction Exemption Procedures**

On October 27, DOL/EBSA published a [final rule](#) updating the procedures for filing and processing applications for prohibited transaction exemptions under ERISA. The final rule consolidates the existing policies and guidance on the exemption process into a single source, and clarifies the types of information and documentation required to submit a complete filing. It also expands the method for transmitting filings to

include electronic submissions, and makes exemptions more understandable for participants and other interested parties. The final rule is effective December 27, 2011, and applies to all exemptions filed on or after that date.

### **Form 5500 Version Selection Tool**

To assist filers, DOL/EBSA has posted the [Form 5500 Version Selection Tool](#) on its website. With the change to an all electronic filing system and changes to the Form 5500 as well, filers may have questions about what to file for plan years prior to the current year or how to amend prior year filings. The Form 5500 Version Selection Tool will help to determine which version of the Form 5500 and which schedules to use. For informational copies of the Forms, visit [www.dol.gov/ebsa/5500main.html](http://www.dol.gov/ebsa/5500main.html). To file, go to [www.efast.dol.gov](http://www.efast.dol.gov). For more information on filing electronically, visit the [EFAST2 FAQs](#).

This tool will not provide detailed instructions specific to a plan's filing requirements. Filers need to review the instructions to the Form 5500/5500-SF for instructions that are applicable to their plan.

Under no circumstances should a filer ever submit the Schedule SSA or any form containing information concerning separated or deferred vested participants electronically to DOL/EBSA. All such information must be filed separately with the IRS. Visit [www.irs.gov](http://www.irs.gov) for further information.

If you are intending to file a delinquent Form 5500/5500-SF annual return report under the Delinquent Filer Voluntary Compliance Program (DFVCP), filers can use the online [DFVCP Penalty Calculator](#) to be certain they have calculated the amount due correctly. There is also the option to pay the DFVCP penalty electronically. Simply select the "Continue to DFVCP Penalty Calculator and Online Payment" box in this tool to get started.